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FILED  
 U.S. DISTRICT COURT

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central DIVISION

BY: DEPUTY CLERK

Melvin Eugene Smith

(Full Name)

PLAINTIFF

VS.

Richard M. Garden M.D.

Kennon Tubbs M.D.

~~Richard M. Garden M.D.~~

~~Richard M. Garden M.D.~~

John Does 1-10 Utah State Prison

DEFENDANTS

CIVIL RIGHTS COMPLAINT  
 (42 U.S.C §1983 or §1985)

Judge Dale A. Kimball  
 DECK TYPE: Civil  
 DATE STAMP: 07/08/2003 @ 09:06:25  
 CASE NUMBER: 2:03CV00566 DAK

RECEIVED CLERK  
 JUN 25 2003  
 U.S. DISTRICT COURT

A. JURISDICTION

1. Jurisdiction is proper in this court according to:

a. X 42 U.S.C. §1983

b.     42 U.S.C. §1985

2. NAME OF PLAINTIFF:

Melvin Eugene Smith

STATE OF RESIDENCY

Utah

PRISON ADDRESS:

Utah State Prison P.O. Box 250

Draper, Utah 84020

3. NAME OF FIRST DEFENDANT: Dr. Richard M. Garden

IS A RESIDENT OF:

SALT LAKE CITY, Utah

(City and State)

EMPLOYMENT:

Medical Director

(Position/Title)

U.S.P.

(Institution)

6

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES \_\_\_ NO ☒. If "YES," briefly explain.

DR. Richard M. Garden, was The medical Director at all times relevant to this action. And is The medical Administrator at The Utah State Prison.

4. NAME OF SECOND DEFENDANT: Kenneth Tubbs, M.D.  
(if applicable)

IS A RESIDENT OF: SALT LAKE CITY, UTAH  
(City and State)

EMPLOYMENT: Medical Doctor U.S.P.  
(Position/Title) (Institution)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO \_\_\_. If "YES," briefly explain.

Kenneth Tubbs, is head of The Hepatitis C Treatment at The Prison, and is refusing plaintiff treatment prescribed by U.M.C.

5. NAME OF THIRD DEFENDANT: ~~Plaintiff's Attorney~~  
(If applicable)

IS A RESIDENT OF: SALT LAKE CITY, UT  
(City and State)

EMPLOYMENT: Contagious Disease Control U.S.P.  
(Position/Title) (Institution)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO \_\_\_. If "YES" briefly explain.

in with Dr. Tubbs have manipulated records, and U.M.C. doctors to take me off treatment and give to another inmate who has filed suit in this court (David Allen Weston) as his starting treatment will prove this fact, do to Dr Tubbs, personal dislike for The plaintiff

6. NAME OF FOURTH DEFENDANT: John Does 1-10  
(If applicable)

IS A CITIZEN OF: SALT LAKE CITY, UT  
(City and State)

EMPLOYMENT: unknown at this time W.S.P.  
(Position/Title) (Institution)

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES ☒ NO ☐ If "YES," briefly explain.

(Use additional sheets of paper if necessary.)

#### B. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem. (Use additional sheets if necessary)

I have the right to know of a serious medical problem, and the right to be treated for a life threatening illness. The Prison (Tubbs) husband is violated my rights by refusing me treatment, then giving me treatment then taking the treatment away do to the fabrication and manipulation of my medical records and doctors at home. Hepatitis C is a life threatening illness

#### C. CAUSE OF ACTION

1. I allege that my constitutional rights, privileges, or immunities have been violated and that the following facts form the basis for my allegations: (If necessary, attach additional pages)

a. (1) Count I: 8th Amendment, Deliberate indifference to a serious medical need.

(2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing legal authority or arguments.)

The Failure of prison doctors to tell me I had Hepatitis C in 1998 then to treat me for 39 days then refuse me treatment do to Defendant Kennon Tubbs personal dislike for the plaintiff has placed his Life [in] imminent danger of serious or fatal injuries by the Defendants.

Cause of Action

1. I had Hepatitis C, for over two years before I was told that I had it. Then a med-Tech told me.
2. I put in to see a doctor for treatment, and was told that I did not meet the prisons criteria.
3. Treatment was denied by several prison doctors and P.A's.
4. I was refused treatment repeatedly.
5. I grieved all through the levels without success.
6. The grievance I have filed have never been responded to by the prison. I have no administrative remedy available see grievance (attached D)
7. when prison medical first discovered I had Hepatitis C, in 1998, I should have been told and treated for it.
8. I should have been told I had Hepatitis C, so I could have taken steps to prevent spreading it to others.
9. Although Hepatitis C may have a 20 or 30 year course, it will cause liver damage cancer, much sooner, especially when ordinary over the counter medications, alcohol will cause liver damage.
10. I am unnecessarily being subjected to liver damage pain and suffering with emotional anguish.
11. Hepatitis C is a life threatening illness, that I need treatment for.
12. Utah Department of corrections has treatment, I received treatment for 39 days. Then treatment was maliciously stopped by Defendant Kennon Tubbs, Richard M. Garden,
13. Said treatment was stopped by Defendant Tubbs, manipulating and falsifying my medical records and doctors at U.M.C.
14. Failure to tell me and treat me is a violation of my 14th amendment right and Equal protection.

When I learned I had Hep it was 3 years of grieving to receive treatment. Then Kennon Tubbs, for no reason took me off treatment

b. (1) Count II: 8th amendment, cruel and unusual punishment

(2) Supporting Facts: Denial of treatment and/or treatment so inadequate that it constitutes no treatment at all, and to increase my punishment and emotional anguish beyond that ordered by the court, subjecting me to unnecessary pain, suffering, emotional anguish, severe liver damage, cancer and death.

c. (1) Count III: Falsifying medical and government documents intentionally

(2) Supporting Facts: I was seen by a specialist at home on 3-6-03 and started treatment on 4-11-03 and on 4-15-03 was seen by Dr. Tubbs, who was high rate because I was receiving treatment and told me he was going to do whatever he could to stop my treatment, and on 5-21-03 he stopped my treatment, falsifying records of mental health and pain from 5 month old records.

#### D. INJURY

1. How have you been injured by the actions of the defendant(s)?

Progressive liver damage from untreated Hepatitis C, continuous pain from liver damage, extreme mental anguish from denial of treatment stopping and starting the turmoil of the

APPENDIX C-9

constant thought of having a life threatening illness and being  
refused treatment after I'd started it?

# E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action or otherwise relate to the conditions of your imprisonment? YES X / NO \_\_\_\_\_. If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

a. Parties to previous lawsuit:

Plaintiff(s): Clayton E. Smith

Defendant(s): Clint Friel, Dr. Richard Garden

b. Name of court and case or docket number: UNITED STATES DISTRICT 2:02-cv-1280

c. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) STILL PENDING

d. Issues raised: Denial of medical treatment for a BACK and  
NECK injuries while "I was" incarcerated!

e. When did you file the lawsuit? 29 January 2003  
 Date Month Year

f. When was it (will it be) decided? \_\_\_\_\_

2. Have you previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C? YES X / NO \_\_\_\_\_. If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.

Through The Prison Grievance System The prison would not  
respond to my grievances see ATTACHMENT you cannot

d. (1) Count IV Eight Amendment violation, policy, custom and practice in ~~F~~icted cruel and unusual punishment.

(2) Supporting Facts: medical Administrator Richard M. Garden, M.D. is responsible for the policy, custom, and practice that directed the medical staff to deny me treatment 39 days after it started now I am in imminent danger of serious fatal injury. This is causing me to go through severe pain and suffering and extreme emotional anguish that will cost me my life. As Hepatitis C is a life threatening illness like cancer or a heart attack.

e. (1) Count V Fourteenth Amendment violation of my rights to Equal protection.

(2) Supporting Facts: Prison medical providers violated my Fourteenth Amendment rights when they told other inmates that they have Hepatitis C, and failed to tell me for over 2 years that I had it then start me on treatment then defendant (Tubbs) with malice stops my treatment putting plaintiff in imminent danger of serious fatal injury to his liver. I have just as much right to know of my disease and treatment as anyone else. See attachments

f. (1) Count VI Fourteenth Amendment violation of my rights to Equal protection.

(2) Supporting Facts: when prison medical providers denied me treatment for hepatitis C, then started it for 39 days and stopped it so they could treat another inmate that has filed a lawsuit, they violated my Equal protection. They failed to treat me similarly to similarly situated inmates. Their denial of treatment has put me through extreme emotional anguish and violated my right to Equal protection under the Fourteenth Amendment.

Exhausted administrative remedies without holding his did, The court cities cases which hold to the proposition that remedies ARE NOT available, when prison officials prevent a prisoner from utilizing that remedy

See Miller v. Norris, 247 F.3d 736 (8th Cir 2001)

See attachment 1

#### **F. REQUEST FOR RELIEF**

1. I believe that I am entitled to the following relief:

Compensatory damages for medical and legal costs; mental/emotional anguish, physical injuries; exemplary/punitive damages to discourage future misconduct; correct false medical records; and Treatment as defendants have put plaintiff in imminent danger of serious fatal injuries and any other relief The court deems fit, and legal counsel

#### **DECLARATION UNDER PENALTY OF PERJURY**

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Winchester prison on June 18<sup>18</sup> 2003  
(Location) (Date)

Melvin E Smith

Signature



Exhibits/  
Attachments  
to this document  
have **not** been  
scanned.

Please see the  
case file.